Mr. C. A. Kunjunni Raja.—I don't move.

Hence the motion was considered withdrawn.

13. Caste and Religious Disabilities Removal Bill.

Deputy President.—Then Mr. V. D. Ouseph's Caste and Religious Disabilities Removal Bill.

Mr. V. D. Ouseph.—I beg to move that the Caste and Religious Disabilities Removal Bill be read in Council.

Mr. M. K. Raman.—I second it.

Mr. A. Eachara Menon.—I oppose it.

Mr. V. D. Ouseph.—I do not think that there can be a more innocent Bill than this one. This has been drafted on the lines of the Caste and Religious Disabilities Removal Act of British India when it was in force for more than half a century. There was, to my knowledge, no opposition to that enactment in British India, and conditions there are not in any way different from what they are here to-day. The purpose of the Bill appears very clear from "Objects and Reasons". All persons by birth become attached to particular communities following particular religions, such as Hinduism, Mahomedanism, Christianity, etc. Unfortunately, we find that, according to the religious usages obtaining in certain communities, the moment that their members change their religion or lose their caste, they forthwith lose all their civil rights in family properties. Of course this rule does not obtain in all communities. It is a characteristic feature of Hinduism. If its members lose their caste either voluntarily, that is, by renunciation or change of religion or where its members are compelled to go out of caste on account of excommunication, the law is that he cannot claim any rights so far as family properties are concerned. The present Bill is intended to remove such disabilities. When a person voluntarily changes or goes out of his religion, he does so either for temporal or for spiritual benefit or for both. So far as temporal purposes are concerned, such a course is necessitated on account of certain social rules such as untouchability, unapproachability, etc. When an Ezhuva becomes a Buddhist or a Christian or a Mahommedan, he does so for one or more of the above reasons, and would it not be rather cruel that he should thereby lose all his civil rights in family properties? The fate of those who lose caste on account of excommunication is harder still. There are, as we all know, functionaries in all communities to exercise the power of excommunication. Even supposing that they do their work honestly, very often their conclusions may go wrong, and is it not very cruel, may I ask, that the person excommunicated should always be further penalised by being deprived of all his rights in his family properties?

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Our State also, as a caste tribunal, exercises this function so far as Hindus are concerned. My object in referring to this matter is far from attributing any evil purpose to anybody, but I want to impress upon you that even in such cases and with the best of intention there is no guarantee for a fair trial or for a satisfactory conclusion. The chief example of this method of excommunication by the State tribunal is the one that is generally known as *Smartha Vicharam*. The King as the head of the Hindu religion exercises, even to-day, the function. The customary procedure adopted in the trial does not respect even elementary principles of natural justice as they are understood to-day. I thought the Members were aware of this procedure, but since some of you seem to be surprised at my statement, I shall read to you a passage from the *Cochin State Manual* presently. But before doing so, I may recall to your memory the hard case of Dewan Bahadur Dr. K. Ravunni Menon, who was excommunicated on account of his having gone to England for higher education. Do you not admit that this is a fit case for relief by legislation ?

Mr. T. K. Krishna Menon.—I may inform the Hon'ble Member that there should be no personal reference, especially when the Member is not conversant with the facts.

Mr. V. D. Ouseph.—You can very well correct me, Sir, if I go wrong.

Mr. T. K. Krishna Menon.—Why should I?

Mr. V.D. Ouseph.—Another kind of excommunication is, as I said, *Smartha Vicharam*. I don't think we can find any parallel to this in any system of Juris Prudence anywhere else. I am quoting from page 341 of the *Cochin State Manual.*

" One example of investigation by caste tribunals has survived to our own times. It is known as Smartha-Vicharam, or enquiry by Smartas, into charges of misconduct against Namburi women. When a woman of that community is suspected of sexual misconduct, the head of the family gives intimation of it to his relatives and others of the same caste, who assemble in the lady's house and hold private enquiry with her maid as the medium of communication. If the suspicion is then found to be unfounded, the enquiry is at once dropped. If, on the other hand, the enquiry goes to confirm the suspicion, the woman, who is thereafter referred to as a Sadhanam or thing, is removed to and lodged in an out-house called Anjam-pura, and the head of the family proceeds to give intimation of the matter to the Raja. The Raja thereupon issues a writ to the Smarta (one versed in the Smriti) to couduct the Vicharam or enquiry, and deputes a representative of his own to assist him. The Smarta as president and two or more Mimamasakas (Brahmans versed in caste law) as members, constitute the tribunal while the Raja's deputy watches over the proceedings and preserves order. The enquiry is held in the suspected woman's house, and the Smarta interrogates her through the medium of the maid-servant. The enquiry is dragged on for days or months till the woman confesses her guilt, or the tribunal is fully

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convinced for her innocence. In the latter case, the members go through the ceremony of Kshama-Namaskaram, that is, they prostrate themselves before the lady and ask her pardon for having subjected her to so much vexation and humiliation, and she is forthwith honourably acquitted If, on the other hand, she confesses her guilt, she is brought out, confronted by the whole tribunal and subjected to a minute cross-examination with a view to elicit the names of all who were involved in her guilt. The result is reported to the Raja, who, after ascertaining the facts of the case, issues orders excommunicating the woman and all those who were accused of criminal intimacy with her. The names of those who are to be so excommunicated are proclaimed by a Pattar Brahman. The woman is then deprived of her umbrella, and her funeral rites are performed. She is however given a lodging on the banks of a river in these days and maintained at the expense of the Sirkar, but if she once quits this shelter, she is no more entitled to this indulgence. The husband and other members of the family have to go through elaborate purificatory and expiatory ceremonies, which conclude with a Suddhabhojanam, or messing with their caste men as a token of purification, after obtaining the Raja's permission. All the expenditure in connection with the enquiry—the housing and feeding of the members of the court and the performance of the subsequent ceremonies—has to be incurred by the woman's family and this sometimes amounts to a large sum. In very rare cases, when the family is found to be altogether without means, the expenditure is met by the Raja. The correspondents are excommunicated on exparte statement of the woman, and are not allowed to offer any defence or cross-examine the woman. They had the right to challenge trial by ordeal when such trial was in vogue."

"In the last case of this kind in Cochin which took place in 1905, notices were issued to all those who were implicated by the woman, sixty-five in number, and they were for the first time allowed to say whether they were guilty or not, and also to produce evidence and cross-examine the woman to establish their innocence. They, one and all, pleaded not guilty, but were excommunicated nevertheless as they were not able to produce satisfactory evidence to support their plea ".

It is only an example and I believe out of that 64 some were Brahmins, some were Ezhuvas. All castes were represented in this 64.

Mr. A. Sankara Menon.—This Bill is not against that.

Mr. V. D. Ouseph.—Suppose all these 64 were innocent or at least some of them. It is the persons named by that lady who are excommunicated. Therefore, all are at her mercy. Is it not hard that these persons should lose all their rights even though they are innocent? Under these circumstances, I request the House to support my Bill.

Mr. A. Sankara Menon.—May I ask one question? What are the disabilities which this Bill seeks to remove, whether the Member has tabulated them or can give them?

Mr. V. D. Ouseph.—I hope the Government Advocate knows better.

Mr. A. Sankara Menon.—I am satisfied with that answer. The Bill is so very indefinite that it is impossible to find

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out which are the disabilities that are now proposed to be removed. I shall put one example. Suppose a person is outcaste. He cannot enter the temple. Is that right to be given to him after the Bill is passed?

Mr. P. Kumaran Ezhuthassan.—May I know from the Hon'ble Member whether the aggrieved party has approached the Hon'ble mover of the Bill to have the grievances redressed?

Mr. V. D. Ouseph.—Aggrieved in what sense? I have conducted cases of that kind. It is not because anybody wanted that I move the Bill. I know the hardship myself, and for the purpose of removing the hardship I move this Bill, and in answer to Mr. Sankara Menon I say there may be disabilities which cannot be removed. For example, the temple entry question. What I mean by saying that all the disabilities should be removed is that only such of them as can be removed need be removed.

Mr. A. S. Harihara Ayyar.—I oppose the Bill on this ground. The mover says in his objects and reasons that this Bill was in force in British India for more than half a century or so. Say from 1850. Abraham v. Abraham was the leading case and whenever a Hindu lost his caste by conversion to other religions he was allowed to participate in the properties which he would have enjoyed if he had not lost his caste. That Bill was pecuniary and confined to the above leading case. The present Bill that is proposed to be introduced here goes to speak of all civil rights. It may come to this. Entry into Hindu temples and houses, attendance on the occasion of marriages, *sradhas*, and the like, common residence and common table, these are all civil rights. For an outcaste to think of such rights is revolutionary. So the present Bill is capable of doing more mischief affecting the religious sentiments of all Hindus. So I oppose the Bill.

Mr. A. B. Salem.—I would like to hear the Government view.

Deputy President.—The Government opposes.

Mr. C. J. Mathew.—May I refer to the Law Member whether there are any disabilities which he would like to remove?

Mr. A. Sankara Menon.—I don't understand.

Mr. P. Krishna Menon.—I also oppose the Bill. Hearing the speech of the Hon'ble Member for Irinjalakkuda, I thought he was introducing a Bill to reform the *Smartha Vicharam*. But under the guise and taking the facts of the *Smartha Vicharam*, he seeks to introduce a Bill which goes to the very root of the society.

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If I am not mistaken, because I did not read the copy of the Bill to-day, the wording used in the opening paragraph is "to remove all the disabilities", and the disabilities are too many, even according to my Hon'ble friend, because he said that they are known better to the Hon'ble Law Member. Because he himself by that confesses that his knowledge of the disabilities is limited. The disabilities are wider and, therefore, it was not possible for him to know all the disabilities and enumerate them. To begin with the disabilities, as was pointed out by the Law Member, there is the temple entry, and to temple entry I shall also drag on kitchen entry. That is a right which every member of the house has, and one of the disabilities that will have to be removed, if the Bill is introduced and passed, is the permission to be given to the member of the family who has been excommunicated to enter the kitchen.

Mr. V. D. Ouseph.—Passed as it is?

Mr. P. Krishna Menon.—Passed as it is or attempted to be passed as it is. If, as a matter of fact, the only disability—I will let the cat out of the bag—that is attempted to be removed is the question of the technical disability, one can understand. But the thing has been so vaguely and so widely worded, that it comprises not only 1 or 2 or 10 but any number of disabilities. Therefore, though the Bill has rather a captivating appearance by the name to enlist the sympathy of a looker-on casually, it will be found that it is as the Chinese fire-works, in appearance so small and innocent, and when it begins to burn, it assumes proportions which will certainly terrify the on-looker. Of course, it is not necessary that I should go into the details. If time permits, I shall continue to-morrow. I oppose this Bill for the preliminary statement itself.

Deputy President.—You can speak to-morrow.

The House rose for the day, it being 5 p. m.

T. K. KRISHNA MENON,
Secretary to the Council.

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